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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* SRINIVAS GUTTA, TOMAS BRODSKY, LALITHA AGNIHOTRI,  
MI-SUEN LEE, and SANTHANA KRISHNAMACHARI

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Appeal 2007-3040  
Application 09/821,028  
Technology Center 2600

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Decided: February 25, 2008

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Before MAHSHID D. SAADAT, JOHN A. JEFFERY, and CARLA M. KRIVAK,  
*Administrative Patent Judges.*

KRIVAK, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection of claims 1-8, 10-17, and 20-22. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We affirm.

## STATEMENT OF CASE

Appellants' invention is a portable entertainment receiver and method for tuning that includes a tuner that tunes to the carrier frequency of a program source for receiving program information modulated on the carrier frequency ( Br. 2) and a program content type classification means coupled to the tuner (Br. 4).

Claims 1, reproduced below, is representative of the subject matter on appeal.

1. An entertainment receiver comprising:

a tuner arrangement, for tuning to selected program sources, each of said program sources having a carrier frequency for carrying a program content;

a controller for controlling the tuner arrangement, the controller including a signal storing arrangement for storing at least one preference for program content type of a user of the receiver; and

program content type classification means coupled to said tuning arrangement for receiving said program content and for generating, from said program content, a program content type signal characterizing the program content, the controller receiving and comparing said program content type signal to said stored at least one preference, and enabling the tuner arrangement to be tuned to a carrier frequency of a program source having a program content type corresponding with the preference for the program type of the user.

## REFERENCES

Bates	US 6,748,237 B1	June 8, 2004 (filed June 5, 2000)
Finseth	US 6,813,775 B1	Nov. 2, 2004 (filed March 24, 2000)

The Examiner rejected claims 1-8, 11-17, 21, and 22 under 35 U.S.C. §102(e) over Bates (Ans. 3). The Examiner also rejected claims 10 and 20 under 35 U.S.C. § 103(a) over Bates and Finseth (Ans. 9).

Appellants contend that Bates does not show or suggest a program content type clarification means that generates a program content type signal from the program content as does Appellants invention (Br. 8). Appellants further contend that combining Finseth does not supply that which is missing from Bates (Br. 11).

### ISSUES

The issues before us are first whether the Examiner erred in citing Bates as anticipating claims 1-8, 11-17, 21, and 22 under 35 U.S.C. § 102(e) and particularly with respect to the program type classification means claimed by Appellant. Further, we must determine whether the Examiner erred in citing the combination of Bates and Finseth as rendering the subject matter of claims 10 and 20 obvious to one of ordinary skill at the time of the invention under 35 U.S.C. § 103(a).

### FINDINGS OF FACT

1. Appellants' invention is an entertainment receiver (10) and a method of tuning an entertainment receiver that includes a tuner (14, 16) arrangement that tunes to a selected program source. Each program source has a carrier frequency for carrying program content. A preference for the program content type of a user is stored in a signal storing arrangement (46) in a controller (22). A program content type signal characterizing the program content is generated in a program content type classifier (40, 42). The controller receives and compares the program content type signal with a stored preference and enables the tuner to be tuned to a

carrier frequency of a program source that has a program content type corresponding to the stored preference (Fig. 1; Cls. 1 & 12).

2. Bates teaches an apparatus and method for selecting audio broadcast signals based upon user preference criterion in which program information in the form of program packets is embedded within a digital data stream (col. 2, ll. 64-67).

3. Bates includes a tuner (18 & 32) as part of a receiver (10). A CPU (12) interfaced with a memory (14) includes a control program (16) executed by the CPU (Fig. 1). The CPU, memory, and control program function as a controller for the receiver (col. 3, ll. 14-21). A program content type classification means (Figs. 3; col. 5, ll. 48-51) monitors available stations and determines the relevancy of each station to user preference criterion (col. 5, ll. 45-51).

#### PRINCIPLES OF LAW

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987). A prior art reference anticipates the subject matter of a claim when that reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. *See RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440 (Fed. Cir. 1984). Additionally, the law of anticipation does not require that the reference teach what the Appellants are claiming, but only that the claims on appeal "read on" something disclosed in the reference. *See Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983).

In rejecting claims under 35 U.S.C. § 102, a single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation. *Perricone v. Medicis Pharmaceutical Corp.*, 432 F.3d 1368, 1375-76 (Fed. Cir. 2005), citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1992).

A structure is an “equivalent” if it differs from the disclosed structure by an insubstantial change which adds nothing of significance. *In re Donaldson*, 16 F.3d 1189 (Fed. Cir. 1994); *Valmont Indus. Inc. v. Reinke Mfg. Co. Inc.*, 983 F.2d 1039, 1042 (Fed. Cir. 1993).

Paragraph 6 of 37 C.F.R. § 112 limits the applicant to the structure, material, or acts in the specification and their equivalents.

## ANALYSIS

### *The Anticipation Rejection*

We first consider the Examiner’s rejection of claims 1-8, 11-17, 21, and 22 under 35 U.S.C. § 102(e) over Bates. As an initial matter, our decision is with respect to claim 1<sup>1</sup> which is representative of the independent claims. Turning to the rejection, the Examiner has indicated how the claimed invention is deemed to be fully met by the disclosure of Bates. Specifically, the Examiner contends that Bates teaches an entertainment receiver that includes a tuner arrangement (Receiver 10, Tuner 1, 18; Tuner 2, 32, Fig. 1), a controller for controlling the tuner arrangement and storing a preference for program content type (CPU 12, memory 14; Fig. 1), and program content type classification means (col. 5, ll. 48-51). The controller receives and compares the program content type signal to the

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<sup>1</sup> It appears that Appellants have merely argued independent claim 1 and by corollary, claim 12. Thus, since no specific arguments were provided for the remaining claims, the claims stand or fall together.

stored preference and enables the tuner arrangement to be tuned to a carrier frequency of a program source having a program content type corresponding with the user preference (Fig. 8). The Examiner also contends that the program content type classification means (40 and 42, Fig. 1) derives signals indicative of genre, music type, or talk type programs (Spec. 5:28 – 6:5), and that Bates discloses, in col. 2, ll. 10-26, that the broadcast system includes genre and/or classification (Ex. Ans. 11).

Appellants argue that Bates does not disclose the program content type classification means of the invention. Appellants assert that Bates discloses an “automated selection of audio broadcast signal source based on user preference criterion, in which ‘program information, e.g., in the form of program information packets, is embedded within the digital data stream’ (col. 2, lines 64-67), is used to identify the parameters of the program content being received.” (App. Br. 7) Therefore, the information packets of Bates are not part of the program content, but are in addition to the program content; they are part of the broadcast (or program) signal that includes the program content (App. Br. 8).

Appellants’ argument that the information packets of Bates are not embedded but rather are “in addition to the program content” is without merit as the information packets can be considered part of the program content since they are included in the broadcast (or program signal) that includes the program content. No distinction is made in Appellants’ claims regarding the program content. Further, Appellant’s Specification states that the program content type signals can be derived using explicit, implicit, and a combination of explicit and implicit modes. “In the explicit mode, the preferred program content type is derived in response to input signals associated with inputs of the user derived from sources other than the received program content” (Spec. 3:26-31). “In the implicit mode,

the preferred content type is derived in response to signals resulting from received program content” (Spec. 4:1-2). In the combined explicit/implicit mode, “the stored program content type signals can be initially derived in the explicit mode and modified in response to information derived from the implicit mode” (Spec. 4:2-4). Appellants’ program content type signals can therefore be part of the broadcast (program) packet signal that includes the program content (App. Br. 8) as does Bates. Thus, Appellants’ argument that “[w]hile the program information packets are embedded in and as such are part of the broadcast signal, the program information packets are in addition to the audio programming (program content) carried by the audio broadcast signal” (App. Br. 9) is not commensurate in scope with the claims. We find that the broadest reasonable interpretation of “program content type classification means” can be read to cover all data received by the system; the textual data as well as the program data. That is, the program content can be read to include all the received information. Although the terms in Appellants claim and Bates are not identical, there is an insubstantial difference between Bates and what is claimed.

Thus, in accordance with the decisions in *In re Donaldson* and *Valmont Indus. Inc. v. Reinke Mfg. Co. Inc.*, supra, we find that the program content type classification means of Appellants’ invention is found in Bates.

Since the other limitations of representative claim 1 are undisputed as they pertain to Bates, and we agree with the Examiner that the limitation regarding the program type classification means is found in Bates, we agree with the Examiner that Bates discloses all the limitations of claim 1 and sustain the rejection of that claim and thus the rejection of claims 2-8, 11-17, 21, and 22 also.



*Obviousness Rejection*

We now address the Examiner's rejection of dependent claims 10 and 20 under 35 U.S.C § 103(a) as unpatentable over Bates and Finseth.

Appellants contend that Finseth does not supply that which is missing from Bates (App. Br. 11) and nominally address the Finseth reference. Thus, Appellants have presented no substantive arguments regarding the Examiner's prima facie case of obviousness based on the collective teachings of Bates and Finseth apart from merely noting what Finseth discloses. It is well settled that once the Examiner makes a prima facie case of obviousness, the burden then shifts to the Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

To the extent Appellants are separately arguing the patentability of claims 10 and 20, such an argument falls well short of persuasively rebutting the Examiner's prima facie case of obviousness. We therefore sustain the rejection of claims 10 and 20.

CONCLUSION

We therefore conclude that the Examiner did not err in rejecting claims 1-8, 11-17, 21, and 22 under 35 U.S.C. § 102(e) and claims 10 and 20 under 35 U.S.C § 103(a).

DECISION

Appeal 2007-3040  
Application 09/821,028

The decision of the Examiner rejecting claims 1-8, 10-17, and 20-22 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

Appeal 2007-3040  
Application 09/821,028

AFFIRMED

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